

LPS-n162295-v1

Document Name	CWA COMPLAINT
Author	Woolner, Rhodora
Document Type	Pleading
LSA(s)	
Co-Counsel	
Co-Counsel LSA(s)	
Distribution List	Lu, Sarah (ENRD);Rose, Robert (ENRD);Lattin, Sue (ENRD);Woolner, Rhodora (ENRD)
Fileroom	LPS - Main Justice
DJ#	
Case Name	
Court	CA N.D. Cal.; 9th Cir.
Notes	SCANNED/UNASSIGNED
Double-Sided	Y
Received Date	9/16/2010
Urgent	
Oversize	
Bound Document	



1942445
(27)
T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
michael@lozeaudrury.com

ENR

BY U.S. CERTIFIED MAIL

September 9, 2010

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Eric Holder, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Dorothy R. Rice, Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
P.O. Box 100
Sacramento, CA 95812-0100

Jared Blumenfeld, Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Re: Northern California River Watch v. Oakland Maritime Support Services, et al.
Case No. C10-03912 JCS (Northern District of California) – Copy of Complaint

Dear Sirs and Madams,

Pursuant to 40 C.F.R. § 135.4, please find enclosed a copy of the complaint filed in the above referenced case on August 31, 2010. Also please note that an earlier case filed by Northern California River Watch – *Northern California River Watch v. Oakland Maritime Support Services, Inc., et al.*, Case No. C-10-01774 SBA – was voluntarily dismissed without prejudice on August 31, 2010. Case No. C10-03912 effectively replaces that earlier case.

Sincerely,

Michael R. Lozeau
Attorney for Plaintiff Northern California River Watch

Encl.

10 SEP 16 AM 33
DEPT OF JUSTICE
ENVIRONMENTAL DIVISION

PAGE
BREAK

1 Michael R. Lozeau (State Bar No. 142893)
2 Douglas J. Chermak (State Bar No. 233382)
3 LOZEAU DRURY LLP
4 410 12th Street, Suite 250
5 Tel: (510) 836-4200
6 Fax: (510) 836-4205 (fax)
7 E-mail: michael@lozeaudrury.com
8 doug@lozeaudrury.com

9 Attorneys for Plaintiff
10 NORTHERN CALIFORNIA RIVER WATCH

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 NORTHERN CALIFORNIA RIVER
14 WATCH, a non-profit corporation,

15 Plaintiff,

16 vs.

17 OAKLAND MARITIME SUPPORT
18 SERVICES, INC., a corporation;
19 WILLIAM ABOUDI, an individual; and
20 JORGE GONZALEZ RIVERA d.b.a.
21 CHRISTIAN BROTHERS TRUCK
22 SERVICES, an individual,

23 Defendants.

Case No. _____

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 to 1387)

24 NORTHERN CALIFORNIA RIVER WATCH, by and through its counsel, hereby
25 alleges:

26 **I. JURISDICTION AND VENUE**

27 1. This is a civil suit brought under the citizen suit enforcement provisions of the
28 Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the "Clean Water Act"
or "the Act"). This Court has subject matter jurisdiction over the parties and the subject
matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A),
and 28 U.S.C. § 1331 (an action arising under the laws of the United States).

2. On February 25, 2010, Plaintiff provided notice of the Defendants' violations

1 of the Act, and of its intention to file suit against the Defendants, to the Administrator of the
2 United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region
3 IX; the Executive Director of the State Water Resources Control Board ("State Board"); the
4 Executive Officer of the Regional Water Quality Control Board, San Francisco Bay Region
5 ("Regional Board"); and to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A).

6 A true and correct copy of Plaintiff's notice letter is attached as Exhibit A, and is
7 incorporated by reference.

8 3. More than sixty days have passed since notice was served on Defendants and
9 the state and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that
10 neither the EPA nor the State of California has commenced or is diligently prosecuting a
11 court action to redress the violations alleged in this complaint. This action is not barred by
12 any prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

13 4. Venue is proper in the Northern District of California pursuant to Section
14 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located
15 within this judicial district. Pursuant to Local Rule 3-2(c), intradistrict venue is proper in
16 Oakland, California, because the source of the violations is located within Alameda County.

17 **II. INTRODUCTION**

18 5. This complaint seeks relief for Defendants' discharges of polluted storm water
19 from its transportation support services facility into the waters of the United States in
20 violation of the Act and the State of California's General Permit for storm water discharges,
21 State Water Resources Control Board ("State Board") Water Quality Order No. 91-13-
22 DWQ, as amended by Water Quality Order No. 92-12-DWQ and Water Quality Order No.
23 97-03-DWQ, National Pollutant Discharge Elimination System ("NPDES") General Permit
24 No. CAS000001, (hereinafter "General Permit" or "Permit"). Defendants' violations of the
25 filing, monitoring, reporting, discharge and management practice requirements, and other
26 procedural and substantive requirements of the General Permit and the Act are ongoing and
27 continuous.

28 6. The failure on the part of persons and facilities such as Defendants and their

1 industrial facility to comply with storm water requirements is recognized as a significant
2 cause of the continuing decline in water quality of the San Francisco Bay (the "Bay") and
3 other area receiving waters. The general consensus among regulatory agencies and water
4 quality specialists is that storm pollution amounts to more than half of the total pollution
5 entering the aquatic environment each year. In most areas of Alameda County, storm water
6 flows completely untreated through storm drain systems or other channels directly to the
7 waters of the United States.

8 **III. PARTIES**

9 7. Plaintiff NORTHERN CALIFORNIA RIVER WATCH ("River Watch") is a
10 501(c)(3) non-profit public benefit corporation duly organized under the laws of the State of
11 California, with headquarters and main office located in Sebastopol, California. River
12 Watch is dedicated to protect, enhance and help restore the surface and subsurface waters of
13 Northern California. To further these goals, River Watch actively seeks federal and state
14 agency implementation of the Act and other laws and, where necessary, directly initiates
15 enforcement actions on behalf of itself and its members.

16 8. Members of River Watch live in the San Francisco Bay area and use and enjoy
17 the waters into which Defendants have caused, is causing, and will continue to cause,
18 pollutants to be discharged. Members of River Watch have interests in the San Francisco
19 Bay which have been, are being, or may be adversely affected by Defendants' violations of
20 the Act as alleged in this Complaint. Said members use the affected waters for recreation,
21 sports, fishing, boating, kayaking, swimming, hiking, photography, nature outings, and the
22 like. The relief sought will redress the injury in fact to Plaintiff and its members and the
23 likelihood of future injury and interference with the interests of said members. The relief
24 sought herein will redress the harms to River Watch caused by Defendants' activities.

25 9. Continuing commission of the acts and omissions alleged above will irreparably
26 harm Plaintiff and its members, for which harm they have no plain, speedy or adequate remedy
27 at law.

28 10. Defendant OAKLAND MARITIME SUPPORT SERVICES, INC. ("OMSS")

1 is a corporation organized under the laws of the State of California. Defendant OMSS
2 operates a transportation support services facility in Oakland, California.

3 11. Defendant WILLIAM ABOUDI is the president of Oakland Maritime Support
4 Services, Inc. Defendant Aboudi is primarily responsible for activities resulting in storm
5 water pollution discharges at the OMSS facility located at 11 Burma Road, Oakland,
6 California.

7 12. Based upon Plaintiff's information and belief, Defendant JORGE GONZALEZ
8 RIVERA d.b.a. CHRISTIAN BROTHERS TRUCK SERVICES ("Christian Brothers") is an
9 individual engaged in an unincorporated business. Defendant Christian Brothers is engaged
10 in truck repair and maintenance services at the OMSS facility located at 11 Burma Road,
11 Oakland, California.

12 **IV. STATUTORY BACKGROUND**

13 13. Section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits the discharge of any
14 pollutant into waters of the United States, unless such discharge is in compliance with
15 various enumerated sections of the Act. Among other things, Section 301(a) prohibits
16 discharges not authorized by, or in violation of, the terms of an NPDES permit issued
17 pursuant to Section 402 of the Act, 33 U.S.C. §1342.

18 14. Section 402(p) of the Act establishes a framework for regulating municipal and
19 industrial storm water discharges under the NPDES program. 33 U.S.C. §1342(p). States
20 with approved NPDES permit programs are authorized by Section 402(p) to regulate
21 industrial storm water discharges through individual permits issued to dischargers and/or
22 through the issuance of a single, statewide general permit applicable to all industrial storm
23 water dischargers. 33 U.S.C. § 1342(p).

24 15. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the
25 U.S. EPA has authorized California's State Board to issue NPDES permits including general
26 NPDES permits in California.

27 16. The State Board elected to issue a statewide general permit for industrial
28 discharges. The State Board issued the General Permit on or about November 19, 1991,

1 modified the General Permit on or about September 17, 1992, and reissued the General
2 Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water Act, 33
3 U.S.C. § 1342(p).

4 17. In order to discharge storm water lawfully in California, industrial dischargers
5 must comply with the terms of the General Permit or have obtained and complied with an
6 individual NPDES permit. 33 U.S.C. § 1311(a).

7 18. The General Permit contains certain absolute prohibitions. Discharge
8 Prohibition A(1) of the General Permit prohibits the direct or indirect discharge of materials
9 other than storm water ("non-storm water discharges"), which are not otherwise regulated by
10 an NPDES permit, to the waters of the United States. Discharge Prohibition A(2) of the
11 General Permit prohibits storm water discharges and authorized non-storm water discharges
12 that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water
13 Limitation C(1) of the General Permit prohibits storm water discharges to any surface or
14 ground water that adversely impact human health or the environment. Receiving Water
15 Limitation C(2) of the General Permit prohibits storm water discharges that cause or
16 contribute to an exceedance of any applicable water quality standards contained in a
17 Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

18 19. In addition to absolute prohibitions, the General Permit contains a variety of
19 substantive and procedural requirements that dischargers must meet. Facilities discharging,
20 or having the potential to discharge, storm water associated with industrial activity that have
21 not obtained an individual NPDES permit must apply for coverage under the State's General
22 Permit by filing a Notice of Intent ("NOI"). The General Permit requires existing
23 dischargers to file their NOIs before March 30, 1992.

24 20. Dischargers must also develop and implement a Storm Water Pollution
25 Prevention Plan ("SWPPP"). The SWPPP must comply with the standards of Best Available
26 Technology Economically Achievable ("BAT") and Best Conventional Pollutant Control
27 Technology ("BCT"). The General Permit requires that an initial SWPPP have been
28 developed and implemented before October 1, 1992. The SWPPP must, among other

1 requirements, identify and evaluate sources of pollutants associated with industrial activities
2 that may affect the quality of storm and non-storm water discharges from the facility and
3 identify and implement site-specific best management practices ("BMPs") to reduce or
4 prevent pollutants associated with industrial activities in storm water and authorized non-
5 storm water discharges (Section A(2)). The SWPPP's BMPs must implement BAT and
6 BCT (Section B(3)). The SWPPP must include: a description of individuals and their
7 responsibilities for developing and implementing the SWPPP (Section A(3)); a site map
8 showing the facility boundaries, storm water drainage areas with flow pattern and nearby
9 water bodies, the location of the storm water collection, conveyance and discharge system,
10 structural control measures, impervious areas, areas of actual and potential pollutant contact,
11 and areas of industrial activity (Section A(4)); a list of significant materials handled and
12 stored at the site (Section A(5)); a description of potential pollutant sources including
13 industrial processes, material handling and storage areas, dust and particulate generating
14 activities, and a description of significant spills and leaks, a list of all non-storm water
15 discharges and their sources, and a description of locations where soil erosion may occur
16 (Section A(6)). The SWPPP must include an assessment of potential pollutant sources at the
17 facility and a description of the BMPs to be implemented at the facility that will reduce or
18 prevent pollutants in storm water discharges and authorized non-storm water discharges,
19 including structural BMPs where non-structural BMPs are not effective (Section A(7), (8)).
20 The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary
21 (Section A(9),(10)).

22 21. The General Permit requires dischargers to eliminate all non-storm water
23 discharges to storm water conveyance systems other than those specifically set forth in
24 Special Condition D(1)(a) of the General Permit and meeting each of the conditions set forth
25 in Special Condition D(1)(b).

26 22. The General Permit requires dischargers commencing industrial activities
27 before October 1, 1992 to develop and implement an adequate written Monitoring and
28 Reporting Program no later than October 1, 1992. Existing facilities covered under the

1 General Permit must implement all necessary revisions to their monitoring programs no later
2 than August 1, 1997.

3 23. As part of their monitoring program, dischargers must identify all storm water
4 discharge locations that produce a significant storm water discharge, evaluate the effectiveness
5 of BMPs in reducing pollutant loading, and evaluate whether pollution control measures set
6 out in the SWPPP are adequate and properly implemented. Dischargers must conduct visual
7 observations of these discharge locations for at least one storm per month during the wet
8 season (October through May) and record their findings in their Annual Report. Dischargers
9 must also collect and analyze storm water samples from at least two storms per year. Section
10 B(5)(a) of the General Permit requires that dischargers "shall collect storm water samples
11 during the first hour of discharge from (1) the first storm event of the wet season, and (2) at
12 least one other storm event in the wet season. All storm water discharge locations shall be
13 sampled." Section B(5)(c)(i) requires dischargers to sample and analyze during the wet season
14 for basic parameters, such as pH, total suspended solids, electrical conductance, and total
15 organic content or oil & grease, and certain industry-specific parameters. Section B(5)(c)(ii)
16 requires dischargers to sample for toxic chemicals and other pollutants likely to be in the storm
17 water discharged from the facility. Section B(5)(c)(iii) requires discharges to sample for
18 parameters dependent on a facility's standard industrial classification ("SIC") code.
19 Dischargers must also conduct dry season visual observations to identify sources of non-storm
20 water pollution. Section B(7)(a) indicates that the visual observations and samples must
21 represent the "quality and quantity of the facility's storm water discharges from the storm
22 event." Section B(7)(c) requires that "if visual observation and sample collection locations are
23 difficult to observe or sample...facility operators shall identify and collect samples from other
24 locations that represent the quality and quantity of the facility's storm water discharges from
25 the storm event."

26 24. Section B(14) of the General Permit requires dischargers to submit an "Annual
27 Report" by July 1 of each year to the executive officer of the relevant Regional Board. The
28 Annual Report must be signed and certified by an appropriate corporate officer. Sections

1 B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include
2 in their annual report an evaluation of their storm water controls, including certifying
3 compliance with the General Permit. *See also* Sections C(9), C(10) and B(14).

4 25. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
5 enforcement actions against any "person," including individuals, corporations, or
6 partnerships, for violations of NPDES permit requirements and for unpermitted discharges of
7 pollutants. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under
8 the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an
9 assessment of civil penalties of up to \$32,500 per day per violation for all violations
10 occurring through January 12, 2009, and \$37,500 per day per violation for all violations
11 occurring after January 12, 2009, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C.
12 §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 - 19.4.

13 26. EPA has established Parameter Benchmark Values as guidelines for determining
14 whether a facility discharging industrial storm water has implemented the requisite BAT and
15 BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established Parameter Benchmark
16 Values for the following parameters, among others: total suspended solids – 100 mg/L; oil &
17 grease – 15 mg/L; total organic carbon – 110 mg/L; pH – 6.0 – 9.0 s.u.; iron – 1.0 mg/L; zinc –
18 0.117 mg/L; nitrate plus nitrite nitrogen ("N+N") – 0.68 mg/L; aluminum – 0.75 mg/L; copper
19 – 0.0636 mg/L; lead – 0.0816 mg/L; cadmium – 0.0159 mg/L; and nickel – 1.417 mg/L. The
20 State Board has proposed a Benchmark Value for electrical conductance of 200 µmhos/cm.

21 27. The Regional Board has established water quality standards for the San
22 Francisco Bay in the Water Quality Control Plan for the San Francisco Bay Basin, generally
23 referred to as the Basin Plan.

24 28. The Basin Plan includes a narrative toxicity standard which states that "[a]ll
25 waters shall be maintained free of toxic substances in concentrations that are lethal or that
26 produce other detrimental responses in aquatic organisms."

27 29. The Basin Plan includes a narrative oil and grease standard which states that
28 "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that

1 result in a visible film or coating on the surface of the water or on objects in the water, that
2 cause nuisance, or otherwise adversely affect beneficial uses.”

3 30. The Basin Plan provides that “[w]aters shall not contain suspended material in
4 concentrations that cause nuisance or adversely affect beneficial uses.”

5 31. The Basin Plan provides that “[t]he pH shall not be depressed below 6.5 nor
6 raised above 8.5.”

7 32. The Basin Plan establishes Marine Water Quality Objectives for zinc of 0.081
8 mg/L (4-day average) and 0.090 mg/L (1-hour average); copper of 0.0031 mg/L (4-day
9 average) and 0.0048 mg/L (1-hour average); lead of 0.0081 mg/L (4 day average) and 0.21
10 mg/L (1-hour average); nickel of 0.0082 mg/L (4-day average) and 0.074 mg/L (1-hour
11 average); cadmium of 0.0093 mg/L (4-day average) and 0.042 mg/L (1-hour average), and;
12 chromium VI of 0.050 mg/L (4-day average) and 1.1 mg/L (1-hour average).

13 **V. STATEMENT OF FACTS**

14 33. Defendants operate a facility located at 11 Burma Road, Oakland, California.
15 (the “Facility”). Defendants are engaged in transportation support services at the Facility.
16 The Facility consists of several buildings, and a yard with paved areas. The Facility covers
17 704,859 square feet of land located at the northern end of the Port of Oakland Harbor
18 Facilities on land owned by the Redevelopment Agency of the City of Oakland. OMSS
19 leases the property from the Redevelopment Agency. On information and belief, OMSS
20 began operations at the Facility on or about August 7, 2006.

21 34. Activities at the Facility fall within Standard Industrial Classification (“SIC”)
22 Industry Group 421, including SIC Codes 4212 and 4213, and Industry Group 423,
23 including SIC Code 4231.

24 35. The Facility is located within a few hundred feet of San Francisco Bay. Storm
25 water from the Facility enters storm drains on or adjacent to the site. The storm water is then
26 conveyed through storm drains to outfalls and is discharged directly into the Bay. On
27 information and belief, there are up to two dozen storm drains that receive storm water flows
28 from the Facility. On information and belief, Plaintiff alleges that there are at least three

1 outfalls that convey storm water from the Facility to the Bay.

2 36. Investigators for River Watch have conducted observations of the Facility
3 which have demonstrated that non-storm water and polluted storm water are being
4 discharged to storm drains at the Facility.

5 37. The industrial activities at the Facility include, but may not be limited to, the
6 storage of truck tractors, containers, and trailers; truck repair and maintenance; tire,
7 container, and trailer repair; and fueling services.

8 38. Numerous activities at the Facility take place outside and are exposed to
9 rainfall. These activities include the storage and movement of trucks, containers, and
10 trailers; maintenance and repair work on trucks, tires, containers, and trailers; and vehicle
11 and truck fueling.

12 39. Truck repair and maintenance activities are conducted near the eastern
13 entrance to the Facility facing Maritime Avenue. Oil, grease, rinse water, soap residue,
14 engine coolant, solvents, volatile organic compounds ("VOCs"), heavy metals associated
15 with vehicle fluids and storm water falling on the maintenance area flow unobstructed to at
16 least two storm drains adjacent to the repair and maintenance area.

17 40. The Facility property is covered by parked trucks, empty oil containers,
18 discarded batteries, metal containers, discarded truck parts, tires, wire, truck trailers,
19 miscellaneous trash, and other discarded or stored equipment. There are visible stains from
20 spilled or leaked oil and grease or other chemicals on the pavement throughout the Facility.
21 The property is exposed to storm water and storm flows due to the lack of overhead
22 coverage, berms and other storm water controls. Storm water falling on the oil-stained areas
23 transports contaminated storm water, oil and grease, rinse water, soap residue, engine
24 coolant, solvents, VOCs, heavy metals associated with vehicle fluids and flow unobstructed
25 to storm drains located throughout the Facility.

26 41. Vehicle and truck fueling are conducted throughout the Facility using a mobile
27 fueling truck. Fueling activities result in diesel fuel spilling on the ground throughout the
28 Facility. The fueling truck is also poorly maintained and outdated. Visible oil leaks can be

1 observed on the side of the fueling truck and the ground beneath where it is parked. Diesel
2 fuel, oil, heavy metals associated with those fluids and other pollutants are carried by storm
3 water to storm drains throughout the Facility.

4 42. Based on information and belief, users of the Facility frequently urinate on the
5 ground. Urine and other wastes, including nitrates and nitrites, are carried by storm water to
6 storm drains throughout the Facility.

7 43. Industrial machinery and heavy equipment, including trucks, are operated and
8 stored at the Facility in areas exposed to storm water flows. Plaintiff is informed and
9 believes, and thereupon alleges, that such machinery and equipment leak contaminants such
10 as oil, grease, diesel fuel, anti-freeze and hydraulic fluids which are exposed to storm water
11 flows.

12 44. The management practices at the Facility are wholly inadequate to prevent the
13 sources of contamination described above from causing the discharge of pollutants to waters
14 of the United States. The Facility lacks essential structural controls such as grading, berming
15 and roofing to prevent rainfall and storm water flows and wash water from coming into
16 contact with these and other sources of contaminants. The Facility lacks structural controls
17 to prevent the discharge of water once contaminated. The Facility lacks an adequate system,
18 such as a filtration system, to treat water once contaminated.

19 45. On information and belief, Plaintiff alleges that areas of the facility or dirty
20 machinery and equipment are periodically washed or hosed down. At these times
21 contaminants present in the area are carried off by the wash water and flushed into the storm
22 sewer system.

23 46. Vehicle traffic at the Facility tracks dust and particulate matter, standing
24 polluted water and mud out onto the surrounding sidewalks and streets. Storm water contact
25 then washes this pollution into the receiving waters.

26 47. Information available to River Watch indicates that as a result of these
27 practices, storm water containing pollutants harmful to fish, plant and bird life, human health
28 and the beneficial uses of the Bay are being discharged during every rain event from the

1 Facility directly to storm drains that flow into the San Francisco Bay.

2 48. The San Francisco Bay is a water of the United States.

3 49. Information available to Plaintiff indicates that Defendants have not applied
4 for or obtained a NPDES permit authorizing pollutant discharges from the Facility.
5 Information available to Plaintiff indicates that Defendants have not submitted a NOI
6 enrolling the Facility in the General Permit.

7 50. Information available to Plaintiff indicates that Defendants have not fulfilled
8 the requirements set forth in the General Permit for discharges from the Facility due to the
9 continued discharge of contaminated storm water.

10 51. Plaintiff is informed and believes, and thereupon alleges, that Defendants have
11 failed to develop and implement an adequate Storm Water Pollution Prevention Plan.

12 52. Information available to Plaintiff indicates the continued existence of unlawful
13 storm water and non-storm water discharges at the Facility.

14 53. Plaintiff is informed and believes, and thereupon alleges, that Defendants have
15 not developed and implemented adequate monitoring, reporting and sampling programs for
16 the Facility. Plaintiff is informed and believes, and thereupon alleges, that Defendants have
17 not provided any information as to sampling points, have not sampled with adequate
18 frequency, have not conducted visual monitoring, and have not submitted annual reports to
19 the Regional Board as required for the past five years.

20 **VI. CLAIMS FOR RELIEF**

21 **FIRST CAUSE OF ACTION**

22 **Discharges of Pollutants Without an NPDES Permit
(Violations of 33 U.S.C. § 1311(a))**

23 54. Plaintiff realleges and incorporates Paragraphs 1-53, as if fully set forth herein.

24 55. Section 301(a) of the Act, 33 U.S.C. § 1331(a), prohibits the discharge of any
25 pollutant from any point source to waters of the United States, except for discharges in
26 compliance with an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. §
27 1342(p).

28 56. Defendants discharge pollutants from the Facility into the San Francisco Bay

1 through storm water discharges.

2 57. Plaintiff is informed and believes, and thereupon alleges, that since the date
3 that Defendants began operations at the Facility to the present, Defendants discharged and
4 continue to discharge pollutants without having obtained a NPDES permit as required by
5 Section 301(a) of the Act, 33 U.S.C. §§ 1311(a).

6 58. Plaintiff is informed and believes, and thereupon alleges, that since Defendants
7 began operations at the Facility to the present, Defendants have operated without individual
8 NPDES permit coverage for their polluted storm water discharges, a violation of Sections
9 301(a) and 402(p)(2)(B) of the Act, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

10 59. The polluted storm water discharges from the Facility are therefore unlawful
11 discharges of pollutants from point sources into waters of the United States within the
12 meaning of Section 301 of the Act, 33 U.S.C. § 1311. These violations are not wholly past
13 violations, are capable of repetition, and are therefore enforceable in this citizen suit action,
14 because, *inter alia*, these violations and other ongoing and continuous violations result from
15 the same underlying, and inadequately resolved, causes.

16 **SECOND CAUSE OF ACTION**
17 **Discharges of Contaminated Storm Water**
18 **in Violation of General Permit's Deadline for Enrollment**
19 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

20 60. Plaintiff realleges and incorporates Paragraphs 1-59, inclusive, as if fully set
21 forth herein.

22 61. The General Permit requires existing dischargers to file their NOIs before
23 March 30, 1992.

24 62. Defendants are existing industrial dischargers. Defendants discharge pollutants
25 from the Facility into the San Francisco Bay through storm water discharges.

26 63. Defendants have not filed any NOIs under the General Permit since March 20,
27 1992.

28 64. Plaintiff is informed and believes, and thereupon alleges, that since Defendants
began operations at the Facility to the present, Defendants discharged and continue to

1 discharge pollutants without having filed an NOI with State Board and/or Regional Board
2 consistent with the requirements of the General Permit and Section 301(a) of the Act, 33
3 U.S.C. §§ 1311(a).

4 65. The polluted storm water discharges from the Facility are therefore unlawful
5 discharges of pollutants from point sources into waters of the United States within the
6 meaning of Section 301 of the Act, 33 U.S.C. § 1311. These violations are not wholly past
7 violations, are capable of repetition, and are therefore enforceable in this citizen suit action,
8 because, *inter alia*, these violations and other ongoing and continuous violations result from
9 the same underlying, and inadequately resolved, causes.

10 **THIRD CAUSE OF ACTION**
11 **Discharges of Contaminated Storm Water**
12 **in Violation of General Permit Conditions and the Act**
13 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

14 66. Plaintiff realleges and incorporates Paragraphs 1-65, inclusive, as if fully set
15 forth herein.

16 67. Discharge Prohibition A(2) of the General Permit requires that storm water
17 discharges and authorized non-storm water discharges shall not cause or threaten to cause
18 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the
19 General Permit require that that storm water discharges and authorized non-storm water
20 discharges shall not adversely impact human health or the environment, and shall not cause or
21 contribute to a violation of any water quality standards contained in a Statewide Water Quality
22 Control Plan or the applicable Regional Board's Basin Plan.

23 68. Plaintiff is informed and believes, and thereupon alleges, that since at least
24 Defendants began operations at the Facility to the present, Defendants have been discharging
25 polluted storm water from the Facility directly to storm drains that flow into the San
26 Francisco Bay, in violation of the General Permit.

27 69. During every rain event, rainwater flowing over exposed products, waste
28 materials and accumulated pollutants at the Facility becomes contaminated with pollutants and
flows untreated from the Facility into the storm drain system. This contaminated storm water

1 flows through the storm drain system into the San Francisco Bay.

2 70. Plaintiff is informed and believes, and thereupon alleges, that these discharges of
3 contaminated storm water are causing pollution and contamination of the waters of the United
4 States and are in excess of applicable water quality standards in violation of Discharge
5 Prohibition A(2) of the General Permit.

6 71. Plaintiff is informed and believes, and thereupon alleges, that these discharges
7 of contaminated storm water are adversely affecting human health and the environment in
8 violation of Receiving Water Limitation C(1) of the General Permit.

9 72. Plaintiff is informed and believes, and thereupon alleges, that these discharges of
10 contaminated storm water are contributing to the violation of the applicable water quality
11 standards in the Statewide Water Quality Control Plan and/or the applicable Regional Board's
12 Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

13 73. Every day since Defendants began operations at the Facility that Defendants
14 have discharged and continue to discharge polluted storm water from the Facility in violation
15 of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33
16 U.S.C. § 1311(a). These violations are ongoing and continuous.

17 **FOURTH CAUSE OF ACTION**

18 **Non-Storm Water Discharges in Violation of Permit Conditions and the Act**
19 **(Violations of 33 U.S.C. §§ 1311, 1342)**

20 74. Plaintiff realleges and incorporates Paragraphs 1-73, as if fully set forth herein.

21 75. General Permit Discharge Prohibition A(1) and Special Condition D(1) of the
22 General Permit prohibit discharges of material other than storm water (i.e., non-storm water
23 discharges) to a storm sewer system or waters of the United States, except under certain
24 specified circumstances. Unauthorized non-storm water discharges must be either separately
permitted or eliminated.

25 76. Plaintiff is informed and believes, and thereupon alleges, that since Defendants
26 began operations at the Facility to the present, Defendants have been discharging
27 unauthorized non-storm water which includes but is not limited to water used in industrial
28 processes at the Facility as well as water used to rinse or wash the Facility or industrial

1 materials at the Facility which flows into storm drains and the San Francisco Bay in violation
2 of the General Permit.

3 77. Every day Defendants began operations at the Facility that Defendants fail to
4 address these non-storm water discharges from the facility in violation of the General Permit is
5 a separate day of violation of the Act.

6 **FIFTH CAUSE OF ACTION**

7 **Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan**
8 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

9 78. Plaintiff realleges and incorporates Paragraphs 1-77, as if fully set forth herein.

10 79. Section A of the General Permit requires dischargers of storm water associated
11 with industrial activity to develop and implement an adequate Storm Water Pollution
12 Prevention Plan no later than October 1, 1992.

13 80. Defendants have failed to develop and implement an adequate SWPPP for the
14 Facility. Defendants' ongoing failure to develop and implement an adequate SWPPP for the
15 Facility is evidenced by, *inter alia*, Defendants' outdoor storage of industrial materials,
16 including waste materials, without appropriate best management practices; the continued
17 exposure of significant quantities of industrial material to storm water flows; the failure to
18 either treat storm water prior to discharge or to implement effective containment practices;
19 and the continued discharge of storm water pollutants and non-storm water discharges from
20 the Facility.

21 81. Each day since October 1, 1992 that Defendants have failed to develop and
22 implement an adequate SWPPP for the Facility in violation of the General Permit is a separate
23 and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

24 82. Defendants have been in violation of the SWPPP requirement every day since
25 they began operations at the Facility. Defendants continue to be in violation of the SWPPP
26 requirement each day that they fail to develop and fully implement an adequate SWPPP for the
27 Facility.

28 ///

1 **SIXTH CAUSE OF ACTION**

2 **Failure to Develop and Implement an Adequate Monitoring and Reporting Program**
3 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

4 83. Plaintiff realleges and incorporates Paragraphs 1-82, as if fully set forth herein.

5 84. Section B of the General Permit requires dischargers of storm water associated
6 with industrial activity to develop and implement a monitoring and reporting program
7 (including, *inter alia*, sampling and analysis of discharges) no later than October 1, 1992.

8 85. Defendants have failed to develop and implement an adequate monitoring and
9 reporting program for the Facility. Defendant's ongoing failures to develop and implement
10 adequate monitoring and reporting programs are evidenced by, *inter alia*, its failure to collect
11 and analyze samples from all storm water discharge locations.

12 86. Each day since Defendants began operations at the Facility that Defendants
13 have failed to develop and implement an adequate monitoring and reporting program for the
14 Facility in violation of the General Permit is a separate and distinct violation of Section
15 301(a) of the Act, 33 U.S.C. § 1311(a).

16 **SEVENTH CAUSE OF ACTION**

17 **Failure to File Annual Reports**
18 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

19 87. Plaintiff realleges and incorporates Paragraphs 1-86, as if fully set forth herein.

20 88. Section B(14) of the General Industrial Storm Water Permit requires
21 dischargers to submit an Annual Report by July 1st of each year to the executive officer of
22 the relevant Regional Board. The Annual Report must be signed and certified by an
23 appropriate corporate officer. Section A(9)(d) of the General Industrial Storm Water Permit
24 requires the discharger to include in their Annual Report an evaluation of their storm water
25 controls, including certifying compliance with the General Industrial Storm Water Permit.

26 89. Defendants have failed to submit Annual Reports to the Regional Board since
27 they began operations at the Facility.

28 90. Each day since Defendants began operations at the Facility that Defendants have
failed to submit an Annual Report is a separate and distinct violation of the General Permit and

1 Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants continue to be in violation of the
2 General Permit's requirement to submit Annual Reports each day that it fails to submit such
3 Annual Reports.

4 **EIGHTH CAUSE OF ACTION**
5 **Failure to Implement the Best Available and**
6 **Best Conventional Treatment Technologies**
7 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

8 91. Plaintiff realleges and incorporates Paragraphs 1-90, as if fully set forth herein.

9 92. The General Permit's SWPPP requirements and Effluent Limitation B(3)
10 require dischargers to reduce or prevent pollutants in their storm water discharges through
11 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional
12 pollutants. On information and belief, Plaintiff alleges that Defendants have failed to
13 implement BAT and BCT at the Facility for its discharges of pollutants in violation of
14 Effluent Limitation B(3) of the General Permit.

15 93. Each day since Defendants began operations at the Facility that Defendant has
16 failed to develop and implement BAT and BCT in violation of the General Permit is a separate
17 and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

18 **VII. RELIEF REQUESTED**

19 Wherefore, Plaintiff respectfully request that this Court grant the following relief:

20 a. Declare Defendant to have violated and to be in violation of the Act as
21 alleged herein;

22 b. Enjoin Defendant from discharging pollutants from the Facility and to the
23 surface waters surrounding and downstream from the Facility until such time as Defendants
24 have obtained a NPDES permit;

25 c. Enjoin Defendant from further violating the substantive and procedural
26 requirements of the General Permit or any other applicable NPDES permit;

27 d. Order Defendant to pay civil penalties of \$32,500 per day per violation for
28 all violations occurring through January 12, 2009, and \$37,500 per day per violation for all
violations occurring after January 12, 2009, for each violation of the Act pursuant to Sections

1 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

2 e. Order Defendant to take appropriate actions to restore the quality of
3 navigable waters impaired by their activities;

4 f. Award Plaintiff costs (including reasonable attorney, witness, and consultant
5 fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

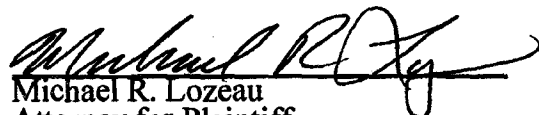
6 g. Award any such other and further relief as this Court may deem appropriate.

7 Dated: August 31, 2010

Respectfully submitted,

8 LOZEAU DRURY LLP

9
10 By:



11 Michael R. Lozeau
12 Attorney for Plaintiff

13 NORTHERN CALIFORNIA RIVER WATCH
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A



500 North Main Street, Suite 110 • Sebastopol, CA 95472 • 707-824-4372 • northernriverwatch.org

February 17, 2010

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

William Aboudi, President
Oakland Maritime Support Services, Inc.
11 Burma Road
Oakland, CA 94607

William Aboudi, President
Oakland Maritime Support Services, Inc.
2505 Bataan Avenue
Oakland, CA 94607

William Aboudi
President & Registered Agent
Oakland Maritime Support Services, Inc.
1401 Georgia Street
Vallejo, CA 94590

Terry D. Graf, Registered Agent
24-7 Mobile Truck Repair
95 S. Market Street, Suite 300
San Jose, CA 95113

Richard Strock, Owner and President
24-7 Mobile Truck Repair, Inc.
11 Burma Road
Oakland, CA 94607

Richard Strock, Owner and President
24-7 Mobile Truck Repair, Inc.
7734 Arrowhead Place
Newark, CA 94560

Jorge Gonzalez Rivera, Owner
Christian Brothers Truck Services
11 Burma Road
Oakland, CA 94607

Elizabeth Castillo
President & Registered Agent
Castillo Mobile Truck Repair, Inc.
2469 60th Avenue
Oakland, CA 94605

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act**

Dear Messrs. Aboudi, Graf, Strock, Gonzalez Rivera, and Ms. Castillo:

I am writing on behalf of the Northern California River Watch ("River Watch") in regard to violations of the Clean Water Act ("Act") that River Watch believes are occurring at the Oakland Maritime Support Services, Inc. facility located at 11 Burma Road in Oakland, California, adjacent to the Port of Oakland (the "Facility"). River Watch is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural

resources of the San Francisco Bay and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of Oakland Maritime Support Services, Inc., Christian Brothers Truck Services, Castillo Mobile Truck Repair, Inc., and 24/7 Mobile Truck Repair, Inc. (all recipients are hereinafter collectively referred to as "OMSS").

This letter addresses OMSS's unlawful discharges of pollutants from the Facility through the City of Oakland's municipal storm sewer system into the Port of Oakland Harbor and San Francisco Bay. OMSS is discharging storm water without having obtained coverage pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CAS000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit") or an individual NPDES permit in violation of Section 301(a) of the federal Clean Water Act, 33 U.S.C. § 1311(a). Alternatively, to the extent OMSS files a notice of intent to comply with the General Permit, OMSS is violating Sections 301(a) and 402 by failing to comply with the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, OMSS is hereby placed on formal notice by River Watch that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, River Watch intends to file suit in federal court against Oakland Maritime Support Services, Inc., William Aboudi, Christian Brothers Truck Services, Castillo Mobile Truck Repair, Inc., and 24-7 Mobile Truck Repair, Inc. under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the Order. These violations are described more extensively below.

I. Background.

OMSS operates a transportation support services facility located at 11 Burma Road, Oakland, California, 94607. The facility is engaged in maritime support services, including but not limited to the storage of truck tractors, containers and trailers by subleasing space to owner/operators and trucking companies, truck repair and maintenance, tire repair, container repair, trailer repair, and fueling services. Activities at the Facility fall within Standard Industrial Classification ("SIC") Industry Group 421, including SIC Codes 4212 and 4213, and Industry Group 423, including SIC Code 4231. The Facility covers 704,859 square feet of land located at the northern end of the Port of Oakland Harbor Facilities on land owned by the Redevelopment Agency of the City of Oakland. Oakland Maritime Support Services, Inc. leases the property from the Redevelopment Agency. Oakland Maritime Support Services, Inc. subleases the facility to various other trucking companies and other entities, including Christian Brothers Truck Services, Castillo Mobile Truck Repair, Inc., and 24/7 Mobile Truck Repair, Inc.

Observations of the Facility demonstrate that non-storm water and polluted storm water are being discharged to storm drains at the Facility.

Truck repair and maintenance activities are conducted near the eastern entrance to the Facility facing Maritime Avenue. Oil, grease, rinse water, soap residue, engine coolant, solvents, volatile organic compounds ("VOCs"), heavy metals associated with vehicle fluids and storm water falling on the maintenance area flow unobstructed to at least two storm drains adjacent to the repair and maintenance area. No storm water treatment measures are observed in or around those storm drains that would constitute the best available treatment technology economically available ("BAT") to prevent or control such discharges.

Based upon information and belief, River Watch believes vehicle maintenance and repairs are conducted throughout the Facility. Empty oil containers are readily observable discarded throughout the Facility. Numerous oil stains on the ground occur throughout the facility. Storm water falling on these oil-stained areas transport contaminated storm water, oil and grease, rinse water, soap residue, engine coolant, solvents, VOCs, heavy metals associated with vehicle fluids and flow unobstructed to numerous storm drains located throughout the Facility.

Vehicle and truck fueling are conducted throughout the Facility using a mobile fueling truck. Fueling activities result in diesel fuel spilling on the ground throughout the Facility. The fueling truck is also poorly maintained and outdated. Visible oil leaks can be observed on the side of the fueling truck and the ground beneath where it is parked. Diesel fuel, oil, heavy metals associated with those fluids and other pollutants are carried by storm water to storm drains throughout the Facility.

On occasion, containers of urine are disposed along the perimeter of the Facility. Based on information and belief, users of the Facility frequently urinate on the ground. Urine and other wastes, including nitrates and nitrites, are carried by storm water to storm drains throughout the Facility.

Discarded batteries, containers, discarded truck parts, tires, wire, truck trailers, miscellaneous trash, and other discarded or stored equipment are scattered throughout the Facility. Pollutants including battery acid, trash, heavy metals, and oil and grease associated with discarded and stored materials at the site are carried by storm water to storm drains throughout the Facility.

At its closest point, the Facility is located within a few hundred feet of San Francisco Bay. On information and belief, there appear to be as many as two dozen storm drains that receive storm water flows from the Facility. Storm water from the Facility enters storm drains on or adjacent to the site and is then conveyed through storm drains to either of two or possibly three outfalls and discharged directly into San Francisco Bay.

The Regional Board has identified beneficial uses of the Bay region's waters and established water quality standards for the San Francisco Bay as well as its tributaries, including the Oakland

Harbor in the "Water Quality Control Plan for the San Francisco Bay Basin," generally referred to as the Basin Plan. *See* http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/basin_plan/docs/basin_plan07.pdf. The beneficial uses of these waters include among others contact and non-contact recreation, fish migration, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities. Water quality considerations relevant to non-contact water recreation, such as hiking, camping, or boating, and those activities related to tide pool or other nature studies require protection of habitats and aesthetic features." *Id.* at 2.1.16. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of Oakland Harbor and the Bay for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms." *Id.* at 3.3.18. The Basin Plan includes a narrative oil and grease standard which states that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or otherwise adversely affect beneficial uses." *Id.* at 3.3.7. The Basin Plan provides that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.14. The Basin Plan provides that "[t]he pH shall not be depressed below 6.5 nor raised above 8.5." The Basin Plan establishes Marine Water Quality Objectives for zinc of 0.081 mg/L (4-day average) and 0.090 mg/L (1-hour average); copper of 0.0031 mg/L (4-day average) and 0.0048 mg/L (1-hour average); lead of 0.0081 mg/L (4 day average) and 0.21 mg/L (1-hour average); nickel of 0.0082 mg/L (4-day average) and 0.074 mg/L (1-hour average); cadmium of 0.0093 mg/L (4-day average) and 0.042 mg/L (1-hour average) and chromium VI of 0.050 mg/L (4-day average) and 1.1 mg/L (1-hour average). *Id.* at Table 3-3.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT"). 65 Fed.Reg. 64767 (October 30, 2000). The following benchmarks have been established for pollutants discharged by OMSS: pH – 6.0-9.0 units; total suspended solids ("TSS") – 100 mg/L, oil and grease ("O&G") – 15 mg/L, cadmium – 0.0159 mg/L, zinc – 0.117 mg/L, copper – 0.0636 mg/L, nickel – 1.417 mg/L, lead – 0.0816 mg/L, aluminum – 0.75 mg/L, and iron – 1.0 mg/L. The State Water Resources Control Board ("State Board") also has proposed adding a benchmark level to the General Permit for specific conductance (200 µmho/cm).

II. Discharges of Industrial Storm Water and Pollutants to Waters of the United States Without a NPDES Permit.

OMSS has violated the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, by discharging pollutants to waters of the United States from the Facility without a NPDES permit as required by the Act. The Clean Water Act provides that, absent a permit and subject to certain limitations, "the discharge of any pollutant by any person shall be unlawful." 33 U.S.C. § 1311(a). A review of available public records indicates that OMSS has failed to file a Notice of Intent to Comply with the General Permit or otherwise obtain a NPDES permit authorizing discharges of pollutants and contaminated storm water from the Facility. OMSS has been in continuous, daily violation of the General Permit and the Act since it began operation at the Facility. Based on information and belief, OMSS has operated the Facility since at least August 7, 2006 or any other date on which OMSS began operations at the site, whichever is earlier, and is subject to penalties for these violations occurring since that date.

III. Discharges in Violation of Section 402(p) of the CWA and Failure to Comply with the Prohibitions and Discharge Requirements of the General Industrial Storm Water Permit

Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Industrial Storm Water Permit. Discharge Prohibition A(1) of the General Industrial Storm Water Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

Therefore, OMSS has violated the Act each time that OMSS has discharged storm water or wash water contaminated with pollutants at levels that exceed any applicable water quality standards at the point where storm water leaves OMSS' facility. River Watch believes that since OMSS began operations at the Facility, OMSS has discharged storm water containing pollutants and storm water associated with industrial activity from the Facility to storm drains at the Facility leading to waters of the United States at least each day with a significant rain event at or near the Facility. Every discharge to storm drains at the Facility exceeds one or more applicable water quality standards, including but not limited to each of the following:

Copper – 0.0031 mg/L (4-day average) and 0.0048 mg/L (1-hour average)
Nickel – 0.0082 mg/L (4-day average) and 0.074 mg/L (1-hour average)
Zinc – 0.081 mg/L (4-day average) and 0.090 mg/L (1-hour average)
Cadmium – 0.0093 mg/L (4-day average) and 0.042 mg/L (1-hour average)
Lead – 0.0081 mg/L (4-day average) and 0.210 mg/L (1-hour average)
Chromium (VI) – 0.050 mg/L (4-day average) and 1.1 mg/L (1-hour average)¹
Oil & Grease – no sheen
pH – not less than 6.5 or greater than 8.5

River Watch alleges that such violations also have occurred and will occur on every significant rain event that has occurred since at least August 7, 2006 or any earlier date by which OMSS began operating the Facility, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Exhibit A, attached hereto, sets forth specific rain dates on which River Watch alleges that OMSS has discharged storm water containing pollutants in violation of the Act and of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit. River Watch also places OMSS on notice that OMSS has committed violations of the Act on each date on which the Facility has discharged non-storm water including fuel, oil and grease, rinse water, wash water, urine, or other wastes to the storm drains at the Facility.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing pollutants at unacceptable levels from the Facility constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, OMSS is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since it began operating the Facility.

IV. Failure to Comply with the Pollution Prevention, Monitoring and Pollution Control Technology Requirement of the General Industrial Storm Water Permit.

The General Permit requires storm water dischargers to comply with its terms, including, *inter alia*, the development and implementation of a Storm Water Pollution Prevention Program ("SWPPP"), the development and implementation of a Monitoring and Reporting Program, the implementation of Best Available Technology Economically Achievable ("BAT") and Best Conventional Pollutant Control Technology ("BCT") and the elimination of non-storm water discharges. OMSS has not complied with the terms of the General Permit. Among other things, OMSS has not prepared and implemented an adequate SWPPP or an adequate Monitoring and Reporting Program for the Facility.

¹ Additionally, the California Office of Health Hazard Assessment has released a draft public health goal for Chromium (VI) in drinking water of 0.06 parts per billion.

Further, OMSS has not implemented BAT/BCT to control the discharge of pollutants in storm water at the Facility. River Watch's ongoing investigation indicates that the Facility lacks any structural best management practices to prevent storm water from coming into contact with pollutant sources and/or measures to prevent contaminated storm water from being discharged from the Facility without treatment.

A. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement an adequate SWPPP no later than October 1, 1992 and to continuously update the SWPPP and its implementation to reflect BAT and BCT storm water controls. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Industrial Storm Water Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Industrial Storm Water Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Industrial Storm Water Permit, Section A(4)); a list of significant materials handled and stored at the site (General Industrial Storm Water Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Industrial Storm Water Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Industrial Storm Water Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Industrial Storm Water Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be

implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

River Watch's investigation of the conditions at the Facility demonstrates that OMSS has been operating without an adequate SWPPP in violation of the requirements set forth above. OMSS has failed to evaluate the effectiveness of its BMPs (indeed, it appears that OMSS has not installed any BMPs at the Facility) and to revise a SWPPP as necessary. OMSS has been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since it began operation of the Facility, and will continue to be in violation every day that OMSS fails to develop and implement an effective SWPPP. OMSS is subject to penalties for violations of the Order and the Act occurring since it began operations.

B. Failure to Develop and Implement an Adequate Storm Water Monitoring Plan

Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers "shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled." (emphasis added) Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Section B(5)(c)(ii) requires that "samples shall be analyzed for . . . [t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities."

OMSS has failed to comply with Section B(5)(a) of the General Industrial Storm Water Permit by failing to collect storm water samples during the first hour of discharge from the first storm event of the wet season and from at least one other storm event per year during each Wet Season since it began operations at the Facility. OMSS also violated Section B(5) by failing to collect storm water samples from all storm water discharge locations at the Facility in each of the years it was required to sample. OMSS also failed to conduct visual observations of every discharge point at the Facility at least once per month during each wet season over the past five years.

OMSS also has failed to analyze its storm water samples for all chemicals and pollutants that are "likely to be present in storm water discharges in significant quantities." See Section B(5)(c)(ii). River Watch is informed and believe that at least the following pollutants are "likely" to be present in OMSS' storm water discharges in significant quantities: aluminum, cadmium, chromium (total and/or hexavalent), copper, iron, lead, manganese, nickel, zinc, and nitrate + nitrite as nitrogen. OMSS' ongoing failure to analyze its storm water samples for these and other pollutants likely to be present in its storm water discharges constitutes ongoing violations of the Act.

Each of OMSS' failures to comply with these mandatory monitoring requirements constitutes an ongoing violation of the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, OMSS is subject to

penalties for these violations of the General Industrial Storm Water Permit and the Act since it began operations at the Facility.

C. Failure to Implement BAT and BCT.

Effluent Limitation B(3) of the General Industrial Storm Water Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Industrial Storm Water Permit, Section A(8). River Watch's investigation indicates that OMSS has not implemented BAT and BCT at the Facility for its discharges of pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

OMSS was required to have implemented BAT and BCT when it began its operations at the Facility. OMSS has been in continuous violation of the BAT and BCT requirements every day since at least August 7, 2006 or any earlier date when its operation of the Facility began, and will continue to be in violation every day that OMSS fails to implement BAT and BCT. OMSS is subject to penalties for violations of the Order and the Act occurring since it began operations at the Facility.

D. Failure to Address Discharges Contributing to Exceedances of Water Quality Standards.

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, River Watch is informed and believe that OMSS discharges storm water containing pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, OMSS was required to submit a report pursuant to Receiving Water Limitations C(3) and C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards. Based on River Watch's review of available documents, OMSS has never filed a timely report describing its noncompliance with the General Industrial Storm Water Permit in violation of Section C(11)(d).

OMSS has been in continuous violation of Receiving Water Limitations C(3), C(4)(a), C(11)(d), E(6) and A(9) of the General Industrial Storm Water Permit every day since at least August 7, 2006, and will continue to be in violation every day that OMSS fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. OMSS is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since it began operations at the Facility.

E. Failure to File Timely, True and Correct Annual Reports.

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Industrial Storm Water Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Industrial Storm Water Permit, Sections C(9) and (10) and B(14).

River Watch's investigation indicates that OMSS has never filed an Annual Report with the Regional Board in violation of the General Industrial Storm Water Permit. OMSS' failures to file Annual Reports are continuous and ongoing violations. OMSS is subject to penalties for violations of Sections (B) and (C) of the General Industrial Storm Water Permit and the Act occurring since it began operations at the Facility.

V. Persons Responsible for the Violations.

River Watch puts Oakland Maritime Support Services, Inc., William Aboudi, Christian Brothers Truck Services, Castillo Mobile Truck Repair, Inc., and 24/7 Mobile Truck Repair, Inc. on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, River Watch puts Oakland Maritime Support Services, Inc., William Aboudi, Christian Brothers Truck Services, Castillo Mobile Truck Repair, Inc., and 24/7 Mobile Truck Repair, Inc. on notice that it intends to include those persons in this action.

VI. Name and Address of Noticing Party.

Our name, address and telephone number is as follows:

Lisa H. Mador, Secretary of the Board
Northern California River Watch
500 North Main St., Suite 110
Sebastopol, CA 95472
Tel. (707) 824-4372

VII. Counsel.

River Watch has retained legal counsel to represent it in this matter. Please direct all communications to:

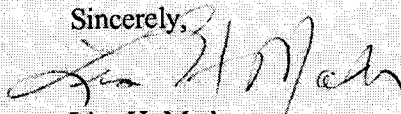
Michael R. Lozeau
Douglas J. Chermak
Lozeau Drury LLP
1516 Oak Street, Suite 216
Alameda, California 94501
(510) 749-9102
michael@lozeaudrury.com
doug@lozeaudrury.com

VIII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects OMSS to a penalty of up to \$32,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, River Watch will seek declaratory relief and injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

River Watch believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Oakland Maritime Support Services, Inc., William Aboudi, Christian Brothers Truck Services, Castillo Mobile Truck Repair, Inc., and 24/7 Mobile Truck Repair, Inc. and their respective agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Lisa H. Mador

Northern California River Watch

SERVICE LIST

Via Registered Mail, Certified Receipt Requested:

William Aboudi
President & Registered Agent
Oakland Maritime Support Services, Inc.
1401 Georgia Street
Vallejo, CA 94590

Elizabeth Castillo
Registered Agent
Castillo Mobile Truck Repair, Inc.
2469 60th Avenue
Oakland, CA 94605

Terry D. Graff
Registered Agent
24-7 Mobile Truck Repair, Inc.
95 S. Market St., #300
San Jose, CA 95113

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dorothy R. Rice, Executive Director
State Water Resources Control Board
1001 I Street Sacramento, CA 95814
P.O. Box 100
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Jared Blumenfeld, Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Bruce H. Wolfe, Executive Officer II
San Francisco Bay Regional Water Quality
Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Via First Class Mail:

Gregory Hunter
Director of Redevelopment
Community and Economic Development
Agency
City of Oakland
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

ATTACHMENT A **Rain Dates, Port of Oakland, Oakland, California**

August 23, 2004	January 21, 2005	May 4, 2005
August 24, 2004	January 22, 2005	May 5, 2005
September 19, 2004	January 23, 2005	May 8, 2005
October 17, 2004	January 24, 2005	May 9, 2005
October 19, 2004	January 25, 2005	May 18, 2005
October 20, 2004	January 26, 2005	May 19, 2005
October 23, 2004	January 27, 2005	June 9, 2005
October 25, 2004	January 28, 2005	June 16, 2005
October 26, 2004	February 7, 2005	June 18, 2005
November 3, 2004	February 11, 2005	October 14, 2005
November 9, 2004	February 14, 2005	October 15, 2005
November 10, 2004	February 15, 2005	October 26, 2005
November 11, 2004	February 16, 2005	November 3, 2005
November 13, 2004	February 17, 2005	November 4, 2005
November 27, 2004	February 18, 2005	November 7, 2005
December 6, 2004	February 19, 2005	November 8, 2005
December 7, 2004	February 20, 2005	November 9, 2005
December 8, 2004	February 21, 2005	November 25, 2005
December 10, 2004	February 27, 2005	November 28, 2005
December 26, 2004	February 28, 2005	November 29, 2005
December 27, 2004	March 1, 2005	December 1, 2005
December 28, 2004	March 2, 2005	December 2, 2005
December 29, 2004	March 3, 2005	December 7, 2005
December 30, 2004	March 4, 2005	December 17, 2005
December 31, 2004	March 9, 2005	December 18, 2005
January 1, 2005	March 18, 2005	December 19, 2005
January 2, 2005	March 19, 2005	December 20, 2005
January 3, 2005	March 20, 2005	December 21, 2005
January 4, 2005	March 21, 2005	December 22, 2005
January 5, 2005	March 22, 2005	December 25, 2005
January 6, 2005	March 23, 2005	December 26, 2005
January 7, 2005	March 27, 2005	December 27, 2005
January 8, 2005	March 28, 2005	December 28, 2005
January 9, 2005	March 29, 2005	December 29, 2005
January 10, 2005	April 3, 2005	December 30, 2005
January 11, 2005	April 4, 2005	December 31, 2005
January 12, 2005	April 6, 2005	January 1, 2006
January 13, 2005	April 7, 2005	January 2, 2006
January 16, 2005	April 8, 2005	January 3, 2006
January 17, 2005	April 22, 2005	January 6, 2006
January 18, 2005	April 23, 2005	January 7, 2006
January 19, 2005	April 27, 2005	January 8, 2006
January 20, 2005	April 28, 2005	January 11, 2006

ATTACHMENT A **Rain Dates, Port of Oakland, Oakland, California**

January 13, 2006	April 7, 2006	January 27, 2007
January 14, 2006	April 8, 2006	January 28, 2007
January 17, 2006	April 9, 2006	February 7, 2007
January 18, 2006	April 10, 2006	February 8, 2007
January 21, 2006	April 11, 2006	February 9, 2007
January 27, 2006	April 12, 2006	February 10, 2007
January 28, 2006	April 15, 2006	February 11, 2007
January 30, 2006	April 16, 2006	February 12, 2007
February 1, 2006	April 17, 2006	February 21, 2007
February 2, 2006	May 19, 2006	February 22, 2007
February 4, 2006	May 21, 2006	February 23, 2007
February 17, 2006	May 24, 2006	February 24, 2007
February 26, 2006	June 28, 2006	February 25, 2007
February 27, 2006	July 6, 2006	February 26, 2007
March 1, 2006	July 20, 2006	February 27, 2007
March 2, 2006	July 21, 2006	February 28, 2007
March 3, 2006	August 2, 2006	March 20, 2007
March 4, 2006	November 1, 2006	March 26, 2007
March 5, 2006	November 2, 2006	April 7, 2007
March 6, 2006	November 3, 2006	April 9, 2007
March 7, 2006	November 8, 2006	April 11, 2007
March 9, 2006	November 11, 2006	April 14, 2007
March 10, 2006	November 12, 2006	April 19, 2007
March 11, 2006	November 13, 2006	April 20, 2007
March 12, 2006	November 17, 2006	April 21, 2007
March 13, 2006	November 22, 2006	April 22, 2007
March 14, 2006	November 26, 2006	April 27, 2007
March 16, 2006	November 27, 2006	May 2, 2007
March 17, 2006	December 8, 2006	May 3, 2007
March 20, 2006	December 9, 2006	May 4, 2007
March 21, 2006	December 10, 2006	May 10, 2007
March 24, 2006	December 11, 2006	May 11, 2007
March 25, 2006	December 12, 2006	May 14, 2007
March 27, 2006	December 13, 2006	May 15, 2007
March 28, 2006	December 14, 2006	May 16, 2007
March 29, 2006	December 15, 2006	May 17, 2007
March 30, 2006	December 21, 2006	May 20, 2007
March 31, 2006	December 26, 2006	May 21, 2007
April 1, 2006	January 3, 2007	May 23, 2007
April 2, 2006	January 4, 2007	May 24, 2007
April 3, 2006	January 16, 2007	May 27, 2007
April 4, 2006	January 17, 2007	May 28, 2007
April 5, 2006	January 26, 2007	May 29, 2007

ATTACHMENT A
Rain Dates, Port of Oakland, Oakland, California

May 30, 2007	January 21, 2008	December 24, 2008
May 31, 2007	January 22, 2008	December 25, 2008
June 1, 2007	January 23, 2008	January 2, 2009
June 3, 2007	January 24, 2008	January 21, 2009
June 4, 2007	January 25, 2008	January 22, 2009
June 6, 2007	January 26, 2008	January 23, 2009
June 8, 2007	January 27, 2008	January 24, 2009
June 10, 2007	January 28, 2008	February 5, 2009
June 13, 2007	January 29, 2008	February 6, 2009
June 14, 2007	January 30, 2008	February 8, 2009
June 15, 2007	January 31, 2008	February 9, 2009
June 19, 2007	February 2, 2008	February 10, 2009
June 21, 2007	February 3, 2008	February 11, 2009
June 22, 2007	February 19, 2008	February 13, 2009
September 22, 2007	February 20, 2008	February 14, 2009
October 9, 2007	February 21, 2008	February 15, 2009
October 10, 2007	February 22, 2008	February 16, 2009
October 12, 2007	February 23, 2008	February 17, 2009
October 15, 2007	February 24, 2008	February 22, 2009
October 16, 2007	March 13, 2008	February 23, 2009
October 17, 2007	March 14, 2008	February 24, 2009
October 19, 2007	March 15, 2008	February 25, 2009
November 5, 2007	March 28, 2008	February 26, 2009
November 10, 2007	March 29, 2008	March 1, 2009
November 11, 2007	April 22, 2008	March 2, 2009
December 4, 2007	April 23, 2008	March 3, 2009
December 6, 2007	October 3, 2008	March 4, 2009
December 7, 2007	October 4, 2008	March 5, 2009
December 17, 2007	October 30, 2008	March 15, 2009
December 18, 2007	October 31, 2008	March 16, 2009
December 19, 2007	November 1, 2008	March 21, 2009
December 20, 2007	November 2, 2008	March 22, 2009
December 27, 2007	November 3, 2008	April 7, 2009
December 28, 2007	November 8, 2008	April 8, 2009
December 29, 2007	November 26, 2008	April 9, 2009
January 3, 2008	December 12, 2008	May 1, 2009
January 4, 2008	December 14, 2008	October 19, 2004
January 5, 2008	December 15, 2008	October 20, 2004
January 6, 2008	December 16, 2008	October 23, 2004
January 7, 2008	December 18, 2008	October 25, 2004
January 8, 2008	December 19, 2008	October 26, 2004
January 9, 2008	December 21, 2008	November 3, 2004
January 10, 2008	December 22, 2008	November 4, 2004

ATTACHMENT A **Rain Dates, Port of Oakland, Oakland, California**

November 10, 2004	March 3, 2005	October 29, 2005
November 11, 2004	March 4, 2005	November 3, 2005
November 13, 2004	March 18, 2005	November 4, 2005
November 27, 2004	March 19, 2005	November 7, 2005
December 6, 2004	March 20, 2005	November 8, 2005
December 7, 2004	March 21, 2005	November 12, 2005
December 8, 2004	March 22, 2005	November 25, 2005
December 9, 2004	March 23, 2005	November 28, 2005
December 15, 2004	March 27, 2005	November 29, 2005
December 18, 2004	March 29, 2005	November 30, 2005
December 20, 2004	April 3, 2005	December 1, 2005
December 26, 2004	April 8, 2005	December 7, 2005
December 27, 2004	April 19, 2005	December 17, 2005
December 28, 2004	April 21, 2005	December 18, 2005
December 29, 2004	April 22, 2005	December 19, 2005
December 30, 2004	April 23, 2005	December 20, 2005
December 31, 2004	April 24, 2005	December 21, 2005
January 1, 2005	April 25, 2005	December 22, 2005
January 2, 2005	April 26, 2005	December 25, 2005
January 3, 2005	April 28, 2005	December 26, 2005
January 7, 2005	May 1, 2005	December 27, 2005
January 8, 2005	May 3, 2005	December 28, 2005
January 9, 2005	May 4, 2005	December 29, 2005
January 10, 2005	May 5, 2005	December 30, 2005
January 11, 2005	May 6, 2005	December 31, 2005
January 25, 2005	May 8, 2005	January 1, 2006
January 26, 2005	May 9, 2005	January 2, 2006
January 27, 2005	May 12, 2005	January 3, 2006
January 28, 2005	May 13, 2005	January 4, 2006
January 29, 2005	May 15, 2005	January 7, 2006
February 14, 2005	May 17, 2005	January 11, 2006
February 15, 2005	May 18, 2005	January 14, 2006
February 16, 2005	May 19, 2005	January 17, 2006
February 17, 2005	May 21, 2005	January 18, 2006
February 18, 2005	May 22, 2005	January 21, 2006
February 19, 2005	May 25, 2005	January 27, 2006
February 20, 2005	May 26, 2005	January 28, 2006
February 21, 2005	May 29, 2005	January 30, 2006
February 22, 2005	June 2, 2005	February 1, 2006
February 27, 2005	June 3, 2005	February 2, 2006
February 28, 2005	June 5, 2005	February 4, 2006
March 1, 2005	October 15, 2005	February 17, 2006
March 2, 2005	October 26, 2005	February 18, 2006

ATTACHMENT A
Rain Dates, Port of Oakland, Oakland, California

February 26, 2006	October 15, 2006	February 27, 2007
February 27, 2006	October 16, 2006	March 13, 2007
February 28, 2006	October 17, 2006	March 15, 2007
March 1, 2006	October 18, 2006	March 17, 2007
March 2, 2006	October 21, 2006	March 20, 2007
March 3, 2006	October 22, 2006	March 23, 2007
March 5, 2006	October 23, 2006	March 26, 2007
March 6, 2006	October 26, 2006	March 27, 2007
March 7, 2006	October 27, 2006	March 29, 2007
March 9, 2006	October 29, 2006	March 30, 2007
March 10, 2006	November 2, 2006	March 31, 2007
March 11, 2006	November 11, 2006	April 2, 2007
March 12, 2006	November 12, 2006	April 3, 2007
March 13, 2006	November 13, 2006	April 6, 2007
March 14, 2006	November 22, 2006	April 7, 2007
March 16, 2006	November 23, 2006	April 10, 2007
March 17, 2006	November 26, 2006	April 11, 2007
March 20, 2006	November 27, 2006	April 12, 2007
March 24, 2006	December 8, 2006	April 14, 2007
March 25, 2006	December 9, 2006	April 16, 2007
March 27, 2006	December 10, 2006	April 17, 2007
March 28, 2006	December 11, 2006	April 19, 2007
March 29, 2006	December 12, 2006	April 20, 2007
March 30, 2006	December 13, 2006	April 21, 2007
March 31, 2006	December 15, 2006	April 22, 2007
April 1, 2006	December 21, 2006	May 2, 2007
April 2, 2006	December 26, 2006	May 3, 2007
April 3, 2006	December 27, 2006	May 4, 2007
April 4, 2006	January 3, 2007	May 10, 2007
April 5, 2006	January 16, 2007	December 4, 2007
April 7, 2006	January 24, 2007	December 6, 2007
April 9, 2006	January 27, 2007	December 7, 2007
April 10, 2006	January 31, 2007	December 16, 2007
April 11, 2006	February 7, 2007	December 17, 2007
April 12, 2006	February 8, 2007	December 18, 2007
April 15, 2006	February 9, 2007	December 19, 2007
April 16, 2006	February 10, 2007	December 20, 2007
April 23, 2006	February 11, 2007	December 27, 2007
October 4, 2006	February 12, 2007	December 28, 2007
October 10, 2006	February 22, 2007	December 29, 2007
October 11, 2006	February 24, 2007	January 3, 2008
October 12, 2006	February 25, 2007	January 4, 2008
October 13, 2006	February 26, 2007	January 5, 2008

ATTACHMENT A
Rain Dates, Port of Oakland, Oakland, California

January 6, 2008	November 1, 2008	April 8, 2009
January 7, 2008	November 3, 2008	April 9, 2009
January 8, 2008	November 8, 2008	May 1, 2009
January 9, 2008	November 26, 2008	May 2, 2009
January 10, 2008	December 1, 2008	May 3, 2009
January 11, 2008	December 6, 2008	May 4, 2009
January 13, 2008	December 14, 2008	May 5, 2009
January 21, 2008	December 15, 2008	June 3, 2009
January 22, 2008	December 18, 2008	July 25, 2009
January 23, 2008	December 19, 2008	October 13, 2009
January 24, 2008	December 21, 2008	October 14, 2009
January 25, 2008	December 24, 2008	October 19, 2009
January 26, 2008	December 25, 2008	November 6, 2009
January 27, 2008	December 31, 2008	November 14, 2009
January 28, 2008	January 2, 2009	November 20, 2009
January 29, 2008	January 5, 2009	November 27, 2009
January 30, 2008	January 6, 2009	December 6, 2009
January 31, 2008	January 21, 2009	December 7, 2009
February 1, 2008	January 22, 2009	December 10, 2009
February 2, 2008	January 23, 2009	December 11, 2009
February 3, 2008	February 5, 2009	December 12, 2009
February 19, 2008	February 6, 2009	December 13, 2009
February 21, 2008	February 8, 2009	December 16, 2009
February 22, 2008	February 10, 2009	December 18, 2009
February 23, 2008	February 11, 2009	December 20, 2009
February 24, 2008	February 13, 2009	December 21, 2009
March 13, 2008	February 14, 2009	December 26, 2009
March 14, 2008	February 15, 2009	December 27, 2009
March 18, 2008	February 16, 2009	December 29, 2009
March 21, 2008	February 17, 2009	December 30, 2009
March 27, 2008	February 22, 2009	January 1, 2010
March 28, 2008	February 23, 2009	January 12, 2010
March 29, 2008	February 24, 2009	January 13, 2010
April 1, 2008	February 25, 2009	January 16, 2010
April 3, 2008	February 26, 2009	January 17, 2010
April 4, 2008	March 1, 2009	January 18, 2010
April 6, 2008	March 2, 2009	January 19, 2010
April 8, 2008	March 3, 2009	January 20, 2010
October 4, 2008	March 4, 2009	January 21, 2010
October 8, 2008	March 5, 2009	January 22, 2010
October 9, 2008	March 15, 2009	January 23, 2010
October 30, 2008	March 22, 2009	January 24, 2010
October 31, 2008	April 7, 2009	January 25, 2010

ATTACHMENT A
Rain Dates, Port of Oakland, Oakland, California

January 26, 2010

January 29, 2010

January 30, 2010

February 4, 2010

February 5, 2010

February 6, 2010

February 8, 2010

February 9, 2010

15 06 13 09 51
MAIL ROOM
100

CERTIFIED MAIL™



7008 2810 0001 2998 4582 **X-RAYED**

SEP 13 2010

DOJ MAILROOM

\$9.200
US POSTAGE
FIRST-CLASS
FROM 94501
SEP 09 2010
stamps.com

062S0007172058

Lozeau Drury LLP
410 12th Street, # 250
Oakland, CA 94607

INSPECTED 2

ERIC Holder U.S. Atty Gen
U.S. Dept of Justice
950 Pennsylvania Ave. N.W.
Washington D.C. 20530-0001

